

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRYAN TRAHAN, Individually and
for Others Similarly Situated,

Plaintiff,

v.

SOUTHWESTERN ENERGY
CORPORATION,

Defendant.

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Case No. 4:23-cv-00734

**DEFENDANT SOUTHWESTERN ENERGY COMPANY’S
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Southwestern Energy Company¹ (“Defendant” or “Southwestern”) files this its original answer and affirmative defenses to Plaintiff Bryan Trahan’s (“Plaintiff” or “Trahan”) Original Complaint (the “Complaint”) (Doc. No. 1).

Southwestern avers to answer each of the individually enumerated paragraphs. However, because many of Plaintiff’s paragraphs contain multiple factual allegations, and without waiving its defenses, Southwestern denies any and all averments in the Complaint not expressly admitted herein as follows:

SUMMARY

1. Southwestern admits that the Complaint was filed in Plaintiff’s name and that Plaintiff asserts claims for overtime wages and other damages pursuant to the Fair Labor Standards Act in the Complaint. Southwestern denies the remaining allegations contained in Paragraph 1 of the Complaint.

¹ Southwestern is incorrectly named in the Complaint. Southwestern’s proper legal name is “Southwestern Energy Company”.

2. Southwestern admits that Plaintiff previously performed services for Southwestern through one of Southwestern's third-party contractors. Southwestern denies the remaining allegations contained in Paragraph 2 of the Complaint.

3. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 3 of the Complaint.

4. Southwestern admits that Plaintiff asserts claims in Paragraph 4 for unpaid overtime on behalf of himself and others but denies that any overtime or other damages are owed. Southwestern denies the remaining allegations contained in Paragraph 4 of the Complaint.

5. Southwestern denies the allegations contained in Paragraph 5 of the Complaint.

6. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 6 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 6 of the Complaint.

7. Southwestern admits that Plaintiff asserts a claim in Paragraph 7 of the Complaint for overtime wages and other damages on behalf of himself and a group of persons, but Southwestern denies that any overtime wages or damages are owed. Southwestern denies the remaining allegations contained in Paragraph 7 of the Complaint.

JURISDICTION AND VENUE

8. Southwestern admits the allegations contained in Paragraph 8 of the Complaint.

9. Southwestern admits the allegations contained in Paragraph 9 of the Complaint.

10. Southwestern admits the allegations contained in Paragraph 10 of the Complaint.

THE PARTIES

11. Southwestern admits that Trahan previously performed services for Southwestern through one of Southwestern's third-party consultants but denies Trahan was employed by

Southwestern. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 11 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 11 of the Complaint.

12. Southwestern denies Trahan was employed by Southwestern. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 12 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 12 of the Complaint.

13. Southwestern denies Trahan was employed by Southwestern. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 13 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 13 of the Complaint.

14. Southwestern admits the allegations contained in Paragraph 14 of the Complaint.

15. Southwestern admits that Plaintiff purports to bring the Complaint on behalf of himself and a class of persons but Southwestern denies that class treatment is proper in this case. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 15 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 15 of the Complaint.

16. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 16 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 16 of the Complaint.

17. Southwestern admits that Plaintiff seeks to certify a collective action as defined in Paragraph 17 of the Complaint but denies that class treatment is proper. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 17 of the

Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 17 of the Complaint.

18. Southwestern admits that it is a Delaware corporation that maintains a headquarters in Spring, Texas. Southwestern denies the remaining allegations contained in Paragraph 18 of the Complaint.

19. Southwestern admits the allegations contained in Paragraph 19 of the Complaint.

COVERAGE UNDER THE FLSA

20. Southwestern admits that it is an employer within the meaning of the FLSA but denies that it was Plaintiff's employer. Southwestern lacks sufficient information to admit or deny the remaining allegations in Paragraph 20 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 20 of the Complaint.

21. Southwestern admits that it is an enterprise within the meaning of the FLSA. Southwestern lacks sufficient information to admit or deny the remaining allegations in Paragraph 21 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 21 of the Complaint.

22. Southwestern admits that it is an enterprise engaged in commerce within the meaning of the FLSA. Southwestern lacks sufficient information to admit or deny the remaining allegations in Paragraph 22 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 22 of the Complaint.

23. Southwestern admits that it has annual gross volume of sales of not less than \$1,000,000. Southwestern lacks sufficient information to admit or deny the remaining allegations in Paragraph 23 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 23 of the Complaint.

24. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 24 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 24 of the Complaint.

25. Southwestern denies the allegations contained in Paragraph 25 of the Complaint.

26. Southwestern denies the allegations contained in Paragraph 26 of the Complaint.

27. Southwestern denies the allegations contained in Paragraph 27 of the Complaint.

28. Southwestern denies the allegations contained in Paragraph 28 of the Complaint.

29. Southwestern denies the allegations contained in Paragraph 29 of the Complaint.

30. Southwestern denies the allegations contained in Paragraph 30 of the Complaint.

31. Southwestern denies the allegations contained in Paragraph 31 of the Complaint.

FACTS

32. Southwestern admits the allegations contained in Paragraph 32 of the Complaint.

33. Southwestern admits that it has contracts with various third parties for the provision of goods and services but denies that it employed Plaintiff. Southwestern denies the remaining allegations contained in Paragraph 33 of the Complaint.

34. Southwestern denies the allegations contained in Paragraph 34 of the Complaint.

35. Southwestern denies the allegations contained in Paragraph 35 of the Complaint.

36. Southwestern denies the allegations contained in Paragraph 36 of the Complaint.

37. Southwestern denies that class treatment is proper. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 37 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 37 of the Complaint.

38. Southwestern denies the allegations contained in Paragraph 38 of the Complaint.

39. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 39 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 39 of the Complaint.

40. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 40 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 40 of the Complaint.

41. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 41 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 41 of the Complaint.

42. Southwestern denies the allegations contained in Paragraph 42 of the Complaint.

43. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 43 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 43 of the Complaint.

44. Southwestern denies the allegations contained in Paragraph 44 of the Complaint.

45. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 45 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 45 of the Complaint.

46. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 46 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 46 of the Complaint.

47. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 47 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 47 of the Complaint.

48. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 48 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 48 of the Complaint.

49. Southwestern denies that it employed Plaintiff. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 49 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 49 of the Complaint.

50. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 50 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 50 of the Complaint.

51. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 51 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 51 of the Complaint.

52. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 52 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 52 of the Complaint.

53. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 53 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 53 of the Complaint.

54. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 54 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 54 of the Complaint.

55. Southwestern denies the allegations contained in Paragraph 55 of the Complaint.

56. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 56 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 56 of the Complaint.

57. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 57 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 57 of the Complaint.

58. Southwestern admits that it did not employ Plaintiff and did not pay Plaintiff on a salary basis. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 58 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 58 of the Complaint.

59. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 59 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 59 of the Complaint.

60. Southwestern denies the allegations contained in Paragraph 60 of the Complaint.

61. Southwestern denies the allegations contained in Paragraph 61 of the Complaint.

62. Southwestern denies the allegations contained in Paragraph 62 with respect to Plaintiff. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 62 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 62 of the Complaint.

63. Southwestern denies the allegations contained in Paragraph 63 of the Complaint.

64. Southwestern denies the allegations contained in Paragraph 64 of the Complaint.

65. Southwestern admits that when third parties like Plaintiff are present on Southwestern's job sites, they are required to follow Southwestern's policies. Southwestern lacks

sufficient information to admit or deny the remaining allegations contained in Paragraph 65 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 65 of the Complaint.

66. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 66 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 66 of the Complaint.

67. Southwestern denies the allegations contained in Paragraph 67 of the Complaint.

68. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 68 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 68 of the Complaint.

69. Southwestern denies the allegations contained in Paragraph 69 of the Complaint.

70. Southwestern denies the allegations contained in Paragraph 70 of the Complaint.

71. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 71 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 71 of the Complaint.

72. Southwestern denies the allegations contained in Paragraph 72 of the Complaint.

73. Southwestern denies the allegations contained in Paragraph 73 of the Complaint.

74. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 74 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 74 of the Complaint.

75. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 75 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 75 of the Complaint.

76. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 76 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 76 of the Complaint.

77. Southwestern denies the allegations contained in Paragraph 77 of the Complaint.

78. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 78 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 78 of the Complaint.

79. Southwestern denies the allegations contained in Paragraph 79 of the Complaint.

80. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 80 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 80 of the Complaint.

81. Southwestern denies the allegations contained in Paragraph 81 of the Complaint.

82. Southwestern admits that Trahan did not have the power to hire, fire, or discipline Southwestern's employees. Southwestern lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 82 of the Complaint. Accordingly, Southwestern denies the remaining allegations contained in Paragraph 82 of the Complaint.

83. Southwestern admits the allegations contained in Paragraph 83 of the Complaint.

84. Southwestern denies the allegations contained in Paragraph 84 of the Complaint.

85. Southwestern denies the allegations contained in Paragraph 85 of the Complaint.

86. Southwestern denies the allegations contained in Paragraph 86 of the Complaint.

87. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 87 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 87 of the Complaint.

88. Southwestern denies the allegations contained in Paragraph 88 of the Complaint.

89. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 89 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 89 of the Complaint.

90. Southwestern denies the allegations contained in Paragraph 90 of the Complaint.

91. Southwestern denies the allegations contained in Paragraph 91 of the Complaint.

92. Southwestern denies the allegations contained in Paragraph 92 of the Complaint.

93. Southwestern denies the allegations contained in Paragraph 93 of the Complaint.

COLLECTIVE ACTION ALLEGATIONS

94. The allegations in Paragraph 94 of the Complaint are descriptive in nature and do not require a responsive pleading. To the extent a responsive pleading is required, Southwestern denies the allegations contained in Paragraph 94 of the Complaint.

95. Southwestern admits that Plaintiff purports to bring his claims as a collective action but denies that class treatment is proper. Southwestern denies the remaining allegations contained in Paragraph 95 of the Complaint.

96. Southwestern denies the allegations contained in Paragraph 96 of the Complaint.

97. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 97 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 97 of the Complaint.

98. Southwestern lacks sufficient information to admit or deny the allegations contained in Paragraph 98 of the Complaint. Accordingly, Southwestern denies the allegations contained in Paragraph 98 of the Complaint.

99. Southwestern denies the allegations contained in Paragraph 99 of the Complaint.

100. Southwestern denies the allegations contained in Paragraph 100 of the Complaint.

101. Southwestern denies the allegations contained in Paragraph 101 of the Complaint.

102. Southwestern denies that Plaintiff is entitled to allegedly unpaid overtime wages.

Southwestern denies the remaining allegations contained in Paragraph 102 of the Complaint.

103. Southwestern denies the allegations contained in Paragraph 103 of the Complaint.

104. Southwestern denies the allegations contained in Paragraph 104 of the Complaint.

105. Southwestern denies the allegations contained in Paragraph 105 of the Complaint.

106. Southwestern denies the allegations contained in Paragraph 106 of the Complaint.

107. Southwestern denies the allegations contained in Paragraph 107 of the Complaint.

108. Southwestern denies the allegations contained in Paragraph 108(a)-(h) of the Complaint.

109. Southwestern denies the allegations contained in Paragraph 109 of the Complaint.

110. Southwestern denies the allegations contained in Paragraph 110 of the Complaint.

111. Southwestern denies the allegations contained in Paragraph 111 of the Complaint.

112. Southwestern denies the allegations contained in Paragraph 112 of the Complaint.

113. Southwestern denies the allegations contained in Paragraph 113 of the Complaint.

114. Southwestern denies the allegations contained in Paragraph 114 of the Complaint.

115. Southwestern denies the allegations contained in Paragraph 115 of the Complaint.

116. Southwestern denies the allegations contained in Paragraph 116 of the Complaint.

117. Southwestern denies the allegations contained in Paragraph 117 of the Complaint.

118. Southwestern denies the allegations contained in Paragraph 118 of the Complaint.

119. Southwestern denies the allegations contained in Paragraph 119 of the Complaint.

120. Southwestern denies the allegations contained in Paragraph 120 of the Complaint.

**CAUSE OF ACTION
VIOLATIONS OF THE FLSA**

121. The allegations in Paragraph 121 of the Complaint are descriptive in nature and do not require a responsive pleading. To the extent a responsive pleading is required, Southwestern denies the allegations contained in Paragraph 121 of the Complaint.

122. Southwestern admits that Plaintiff purports to bring his claims as a collective action but denies that class treatment is proper. Southwestern denies the remaining allegations contained in Paragraph 122 of the Complaint.

123. Southwestern denies the allegations contained in Paragraph 123 of the Complaint.

124. Southwestern denies the allegations contained in Paragraph 124 of the Complaint.

125. Southwestern denies the allegations contained in Paragraph 125 of the Complaint.

126. Southwestern denies the allegations contained in Paragraph 126 of the Complaint.

JURY DEMAND

127. Southwestern admits that Plaintiff demands a trial by jury.

SOUTHWESTERN'S AFFIRMATIVE AND OTHER DEFENSES

1. Southwestern asserts the following affirmative and other defenses. By setting forth these defenses, Southwestern does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to the Plaintiff, nor does Southwestern admit any allegation in the Complaint except as otherwise expressly indicated above.

2. This Court is an improper forum for the claims asserted in the Complaint because the claims are subject to binding arbitration pursuant to valid and enforceable arbitration agreements.

3. This Court lacks subject matter jurisdiction over the claims in the Complaint as they are subject to binding arbitration pursuant to valid and enforceable arbitration agreements and

should be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

4. The Complaint fails to state a claim upon which relief may be granted and should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

5. The Complaint fails to join required parties and should be dismissed pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure.

6. Plaintiff's claims are barred, in whole or in part, because Plaintiff and others allegedly similarly situated have not sustained any injury or damage by reason of any act or omission by Southwestern.

7. Plaintiff's claims and the claims of others allegedly similarly situated are barred, in whole or in part, by the applicable statutes of limitations.

8. Plaintiff's claims and the claims of others allegedly similarly situated are barred, in whole or in part, by the doctrines of estoppel, offset, and/or setoff.

9. To the extent that Plaintiff and others allegedly similarly situated were paid compensation beyond that to which they were entitled, such additional compensation would satisfy, in whole or in part, any alleged claim for unpaid overtime or other monetary relief.

10. Southwestern acted in good faith.

11. If Southwestern's alleged failure to pay overtime wages, if any, was unlawful, none of Southwestern's actions or omissions were willful or ratified as willful.

12. Assuming arguendo, that Plaintiff, and/or others allegedly similarly situated, are entitled to any overtime compensation, any time spent in any non-compensable preliminary or postliminary activities must be excluded from compensable hours of work.

13. Any amount of compensation claimed or sought by Plaintiff and/or others allegedly similarly situated, is not to the extent alleged, and Southwestern claims any applicable statutory credit towards overtime compensation sought under 29 U.S.C. §207.

14. Plaintiff and/or others allegedly similarly situated have sustained no damages. To the extent Plaintiff, and/or others allegedly similarly situated, can establish the existence of any damages, the amount of compensation claimed or sought is *de minimis*, which is not actionable under the FLSA.

15. At all relevant times, Southwestern paid for the services provided by Plaintiff and/or others allegedly similarly situated at a rate that exceeded the minimum wage set forth in the FLSA.

16. Plaintiff's claims and the claims of others allegedly similarly situated are barred, in whole or in part, by the doctrine of laches.

17. Plaintiff's claims and the claims of others allegedly similarly situated are barred, in whole or in part, by the doctrine of accord and satisfaction.

18. Plaintiff and the others allegedly similarly situated are not entitled to both prejudgment interest and liquidated damages under the FLSA.

19. Southwestern denies the existence of an ascertainable common class making such an action inappropriate.

20. Plaintiff is not similarly situated to the proposed class members for the purposes of the FLSA because they did not perform services for Southwestern pursuant to the same contracts, through the same third-party contracts, or work at the same locations.

21. Plaintiff cannot satisfy the requirements for a collective action under the FLSA, thus barring collective action treatment because, *inter alia*, the proposed class members are not similarly situated and/or do not meet the numerosity requirement.

22. Plaintiff cannot establish that Southwestern was his employer or a joint employer.

23. Plaintiff's purported class claims should be dismissed, in whole or in part, because the types of claims alleged by Plaintiff on behalf of himself and the purported class members are matters in which individualized questions of fact and proof of damages predominate, defeating the purported efficiency of the class action device and risking Seventh Amendment rights.

24. Plaintiff is barred from equitable relief because of unclean hands.

Southwestern reserves the right to assert additional affirmative defenses or defenses of which it becomes knowledgeable during the course of discovery.

Dated: March 27, 2023

Respectfully submitted,

/s/ Rachel Powitzky Steely

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**ATTORNEYS FOR DEFENDANT
SOUTHWESTERN ENERGY COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I electronically filed a true and correct copy of the foregoing with the Clerk of court using the CM/ECF system which sent notification of such filing and service upon the following counsel of record:

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/s/ Rachel Powitzky Steely
Rachel P. Steely